

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

ANTONIETTA NGUYEN,

Defendant.

Case No. [23-cr-00155-SI-1](#)

DRAFT FINAL JURY INSTRUCTIONS

JURY INSTRUCTION NO. 1

DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law. You will recall that you took an oath promising to do so at the beginning of the case. Do not allow personal likes or dislikes, sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by any person's race, color, religious beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

JURY INSTRUCTION NO. 2CHARGE AGAINST DEFENDANT NOT EVIDENCE—PRESUMPTION OF
INNOCENCE—BURDEN OF PROOF

The defendant has pleaded not guilty to the charges. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence. The defendant does not have to prove innocence; the government has the burden of proving every element of the charges beyond a reasonable doubt.

JURY INSTRUCTION NO. 3

DEFENDANT’S DECISION NOT TO TESTIFY

A defendant in a criminal case has a constitutional right not to testify. In arriving at your verdict, the law prohibits you from considering in any manner that the defendant did not testify.

JURY INSTRUCTION NO. 4

REASONABLE DOUBT—DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

JURY INSTRUCTION NO. 5

WHAT IS EVIDENCE?

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received in evidence; and
- (3) any facts to which the parties have agreed.

JURY INSTRUCTION NO. 6

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence, and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments, and have said at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence.

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY INSTRUCTION NO. 7

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

By way of example, if you wake up in the morning and see that the sidewalk is wet, you may find from that fact that it rained during the night. However, other evidence, such as a turned-on garden hose, may provide an explanation for the water on the sidewalk. Therefore, before you decide

that a fact has been proven by circumstantial evidence, you must consider all the evidence in the light of reason, experience, and common sense.

JURY INSTRUCTION NO. 8

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

You must avoid bias, conscious or unconscious, based on a witness's race, color, religious

beliefs, national ancestry, gender identity, gender, or economic circumstances in your determination of credibility.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

JURY INSTRUCTION NO. 9 [if needed]

IMPEACHMENT EVIDENCE – WITNESS

You have heard evidence that [*name of witness*], a witness, [*specify basis for impeachment*]. You may consider this evidence in deciding whether or not to believe this witness and how much weight to give to the testimony of this witness.

JURY INSTRUCTION NO. 10

OPINION EVIDENCE, EXPERT WITNESS

You have heard testimony from some witnesses who testified about their opinions and the reasons for those opinions. This opinion testimony is allowed because of the specialized knowledge, skill, experience, training, or education of these witnesses.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's knowledge, skill, experience, training, or education, the reasons given for the opinion, and all the other evidence in the case.

JURY INSTRUCTION No. 11 [if needed]

CHARTS AND SUMMARIES NOT ADMITTED INTO EVIDENCE

During the trial, certain charts and summaries were shown to you to help explain the evidence in the case. These charts and summaries were not admitted into evidence and will not go into the jury room with you. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in this case, you should disregard these

charts and summaries and determine the facts from the underlying evidence.

JURY INSTRUCTION No. 12

CHARTS AND SUMMARIES ADMITTED INTO EVIDENCE

Certain charts and summaries have been admitted into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

JURY INSTRUCTION NO. 13

ACTIVITIES NOT CHARGED

You are here only to determine whether the defendant is guilty or not guilty of the charges in the Indictment. The defendant is not on trial for any conduct or offense not charged in the Indictment.

JURY INSTRUCTION NO. 14

SEPARATE CONSIDERATION OF MULTIPLE COUNTS—SINGLE DEFENDANT

A separate crime is charged against the defendant in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

JURY INSTRUCTION NO. 15

WIRE FRAUD (Counts One through Five)

The defendant is charged in Counts One through Five of the Superseding Indictment with wire fraud in violation of Section 1343 of Title 18 of the United States Code.

For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly devised a scheme or plan to defraud for the purpose of obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or omitted facts. Deceitful statements of half-truths may constitute false or fraudulent

1 representations;

2 Second, the statements made or facts omitted as part of the scheme were material; that is,
3 they had a natural tendency to influence, or were capable of influencing, a person to part with money
4 or property;

5 Third, the defendant acted with the intent to defraud, that is, the intent to deceive and cheat;
6 and

7 Fourth, the defendant used, or caused to be used, an interstate wire communication to carry
8 out or attempt to carry out an essential part of the scheme.

9 In determining whether a scheme to defraud exists, you may consider not only the
10 defendant's words and statements but also the circumstances in which they are used as a whole.

11 To convict the defendant of wire fraud based on omissions of material facts, you must find
12 that the defendant had a duty to disclose the omitted facts arising out of a relationship of trust. That
13 duty can arise either out of a formal fiduciary relationship, or an informal, trusting relationship in
14 which one party acts for the benefit of another and induces the trusting party to relax the care and
15 vigilance that it would ordinarily exercise.

16 A wiring is caused when one knows that a wire will be used in the ordinary course of business
17 or when one can reasonably foresee such use.

18 It need not have been reasonably foreseeable to the defendant that the wire communication
19 would be interstate in nature. Rather, it must have been reasonably foreseeable to the defendant that
20 some wire communication would occur in furtherance of the scheme, and an interstate wire
21 communication must have actually occurred in furtherance of the scheme.

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23 JURY INSTRUCTION NO. 16

24 FIDUCIARY DUTY

25 A "fiduciary" duty exists whenever one person or entity places special trust and confidence
26 in another person—the fiduciary—in reliance that the fiduciary will exercise his or her discretion
27 and expertise with the utmost honesty and forthrightness in the interests of the person or entity, such
28 that the person or entity relaxes the care and vigilance that he, she, or it would ordinarily exercise,

and the fiduciary knowingly accepts that special trust and confidence and thereafter undertakes to act on behalf of the other person or entity based on such reliance.

The mere fact that a business relationship arises between two persons does not mean that either owes a fiduciary duty to the other. If one person engages or employs another and thereafter directs, supervises, or approves the other's actions, the person so employed is not necessarily a fiduciary. Rather, as previously stated, it is only when one party places, and the other accepts, a special trust and confidence—usually involving the exercise of professional expertise and discretion—that a fiduciary relationship exists.

JURY INSTRUCTION NO. 17

CONSPIRACY TO COMMIT WIRE FRAUD (Count Six)

The defendant is charged in Count Six of the Superseding Indictment with conspiring to commit wire fraud in violation of Section 1349 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning no later than in or about January 2016, and continuing through in or about March 2020, there was an agreement between two or more persons to commit at least one crime as charged in the indictment; and

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it.

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which

1 the conspirators agreed to commit.

2 One becomes a member of a conspiracy by knowingly participating in the unlawful plan
3 with the intent to advance or further some object or purpose of the conspiracy, even though the
4 person does not have full knowledge of all the details of the conspiracy. Furthermore, one who
5 knowingly joins an existing conspiracy is as responsible for it as the originators. On the other hand,
6 one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object
7 or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not
8 become a conspirator merely by associating with one or more persons who are conspirators, nor
9 merely by knowing that a conspiracy exists.

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11 JURY INSTRUCTION NO. 18

12 WIRE FRAUD (Counts Seven through Nine)

13 The defendant is charged in Counts Seven through Nine of the Superseding Indictment with
14 wire fraud in violation of Section 1343 of Title 18 of the United States Code.

15 For the defendant to be found guilty of that charge, the government must prove each of the
16 following elements beyond a reasonable doubt:

17 First, the defendant knowingly devised a scheme or plan to defraud for the purpose of
18 obtaining money or property by means of false or fraudulent pretenses, representations, or promises,
19 or omitted facts. Deceitful statements of half-truths may constitute false or fraudulent
20 representations;

21 Second, the statements made or facts omitted as part of the scheme were material; that is,
22 they had a natural tendency to influence, or were capable of influencing, a person to part with money
23 or property;

24 Third, the defendant acted with the intent to defraud, that is, the intent to deceive and cheat;
25 and

26 Fourth, the defendant used, or caused to be used, an interstate wire communication to carry
27 out or attempt to carry out an essential part of the scheme.

28 In determining whether a scheme to defraud exists, you may consider not only the

1 defendant's words and statements but also the circumstances in which they are used as a whole.

2 To convict the defendant of wire fraud based on omissions of material facts, you must find
3 that the defendant had a duty to disclose the omitted facts arising out of a relationship of trust. That
4 duty can arise either out of a formal fiduciary relationship, or an informal, trusting relationship in
5 which one party acts for the benefit of another and induces the trusting party to relax the care and
6 vigilance that it would ordinarily exercise.

7 A wiring is caused when one knows that a wire will be used in the ordinary course of business
8 or when one can reasonably foresee such use.

9 To convict a defendant of wire fraud, the false or fraudulent pretenses, representations, or
10 promises, or omitted facts must directly or indirectly deceive the victim about the nature of the
11 bargain. A misrepresentation will go to the nature of the bargain if it goes to price or quality, or
12 otherwise to essential aspects of the transaction. Whether a misrepresentation goes to the nature of
13 the bargain may depend on the specific transaction at issue.

14 It need not have been reasonably foreseeable to the defendant that the wire communication
15 would be interstate in nature. Rather, it must have been reasonably foreseeable to the defendant that
16 some wire communication would occur in furtherance of the scheme, and an interstate wire
17 communication must have actually occurred in furtherance of the scheme.

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19 JURY INSTRUCTION NO. 19

20 KNOWINGLY

21 An act is done knowingly if the defendant is aware of the act and does not act through
22 ignorance, mistake, or accident. The government is not required to prove that the defendant knew
23 that his acts or omissions were unlawful. You may consider evidence of the defendant's words,
24 acts, or omissions, along with all the other evidence, in deciding whether the defendant acted
25 knowingly.

JURY INSTRUCTION NO. 20

CONSPIRACY TO TRANSPORT MONETARY INSTRUMENTS FOR THE PURPOSE OF
LAUNDERING (Count Ten)

The defendant is charged in Count Ten of the Superseding indictment with money laundering conspiracy in violation of Section 1956(h) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, there was an agreement to commit money laundering;

Second, the defendant knew the objective of the agreement;

Third, the defendant joined the agreement with the intent to further its unlawful purpose.

Money laundering is the knowing transportation of money representing proceeds of some form of unlawful activity from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States, designed in whole or in part to conceal the nature, location, source, ownership, or control of the proceeds of wire fraud.

JURY INSTRUCTION NO. 21

ATTEMPT TO EVADE OR DEFEAT INCOME TAX (Counts Eleven and Twelve)

The defendant is charged in Counts Eleven and Twelve the indictment with tax evasion in violation of Section 7201 of Title 26 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant owed more federal income tax for the calendar year 2018 (Count Eleven) and/or 2019 (Count Twelve) than was declared due on the defendant's income tax return for that calendar year;

Second, the defendant knew that more federal income tax was owed than was declared due on the defendant's income tax return;

Third, the defendant made an affirmative attempt to evade or defeat such additional tax; and

1 Fourth, in attempting to evade or defeat such additional tax, the defendant acted willfully.

2 To prove that the defendant acted “willfully,” the government must prove beyond a
3 reasonable doubt that the defendant knew federal tax law imposed a duty on her, and the defendant
4 intentionally and voluntarily violated that duty.

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6 JURY INSTRUCTION NO. 22

7 DUTY TO DELIBERATE

8 When you begin your deliberations, elect one member of the jury as your foreperson who
9 will preside over the deliberations and speak for you here in court.

10 You will then discuss the case with your fellow jurors to reach agreement if you can do
11 so. Your verdict, whether guilty or not guilty, must be unanimous.

12 Each of you must decide the case for yourself, but you should do so only after you have
13 considered all the evidence, discussed it fully with the other jurors, and listened to the views of your
14 fellow jurors.

15 Do not be afraid to change your opinion if the discussion persuades you that you should. But
16 do not come to a decision simply because other jurors think it is right.

17 It is important that you attempt to reach a unanimous verdict but, of course, only if each of
18 you can do so after having made your own conscientious decision. Do not change an honest belief
19 about the weight and effect of the evidence simply to reach a verdict.

20 Perform these duties fairly and impartially. Do not allow personal likes or dislikes,
21 sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by
22 any person’s race, color, religious beliefs, national ancestry, sexual orientation, gender identity,
23 gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes
24 or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious
25 biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously
26 reject but may be expressed without conscious awareness, control, or intention.

27 It is your duty as jurors to consult with one another and to deliberate with one another with
28 a view towards reaching an agreement if you can do so. During your deliberations, you should not

hesitate to reexamine your own views and change your opinion if you become persuaded that it is wrong.

JURY INSTRUCTION NO. 23

CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This restriction includes discussing the case in person, in writing, by phone, tablet, computer, or any other means, via email, text messaging, or any Internet chat room, blog, website or any other forms of social media. This restriction applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

JURY INSTRUCTION NO. 24

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

JURY INSTRUCTION NO. 25

JURY CONSIDERATION OF PUNISHMENT

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

JURY INSTRUCTION NO. 26

VERDICT FORM

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

JURY INSTRUCTION NO. 27

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous

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Northern District of California

1 verdict or have been discharged.

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